

DATE

Heather Evans
17948 Jefferson Ridge Drive
Baton Rouge, Louisiana 70817

RE: Docket No. 2022-103
Advisory Opinion

Dear Ms. Evans:

The Louisiana Board of Ethics (“Board”), at its April 8, 2022 meeting, considered your request for an advisory opinion as to whether the Code of Governmental Ethics (“Code”) would prohibit you from accepting a part-time position with HYDRIK Wetlands Consultants, LLC (“HYDRIK”) while maintaining your employment with the Enforcement Section of the Louisiana Department of Natural Resources (“DNR”) - Office of Coastal Management (“OCM”) - Interagency Affairs & Field Services Division (“IAFSD”).

FACTS PROVIDED

DNR/OCM regulates the Louisiana Coastal Zone boundary and certain activities that take place within it, in accordance with the federally approved Louisiana Coastal Zone Management Program that was established by Louisiana’s State and Local Coastal Resources Management Act of 1978, La. R.S. 49:214.21, *et seq.* (“SLCRMA”). The SLCRMA charged DNR/OCM to implement the Louisiana Coastal Resources Program (“LCRP”). Specifically, DNR/OCM regulates activities that occur in wetlands, as well as in other habitats when those activities would have a significant impact on the “coastal resources” and “coastal waters” of the state, including but not limited to beaches, dunes, barrier islands, cheniers, and salt domes. OCM is comprised of two (2) divisions: the Permits/Mitigation Division and the Interagency Affairs & Field Services Division. Interagency Affairs & Field Services Division contains the Enforcement Section and Field Services Section.

You have been employed in the Enforcement Section of the DNR/OCM/IAFSD for the last twelve (12) years and are currently a Coastal Resource Scientist IV on a full-time basis. Enforcement authority includes ensuring monitoring of permitted activities and compliance with the mitigation requirement and the terms and conditions of Coastal Use Permits; issuing administrative penalties and Cease and Desist Orders; contributions to the coastal resources fund; restoration of the impacted area to preconstruction conditions; and/or, cost of mitigation or restoration via civil or criminal court proceedings. Your duties include: 1) reviewing possible unauthorized activities performed without a Coastal Use Permit (“CUP”) or in violation of an existing permit; 2) bringing the violator into compliance with the LCRP; 3)

reviewing after-the-fact applications; 4) assisting applicants with completion of the application and issuance of the permit; and, 5) coordinating with the United States Army Corps of Engineering ("USACE"), Louisiana Wildlife and Fisheries, and the State Lands Office to complete after-the-fact CUP applications and mitigation requirements as necessary.

The Field Services Section of the IAFSD is charged with biological assessments of proposed activities and monitoring both permitted activities and unauthorized activities. The field services section is responsible for all biological field investigations and enforcement monitoring activities within the Louisiana Coastal Zone to ensure and maintain compliance with the SLCRMA. Investigations and assessments are performed to evaluate and document any possible direct and significant impacts to coastal waters and provide alternatives for avoidance with minimization of impacts to wetland and coastal resources associated with activities within the coastal zone. Surveillance activities are performed to document potential permitted or unpermitted violations of the LCRP within the Louisiana Coastal Zone. Biological assessments are performed to document any proposed permits for authorization as well as monitoring mitigation and completed activities for compliance with permit conditions. Any issues discovered during the Field Services monitoring and investigations related to unauthorized activities or activities exceeding issued permits are referred to the Enforcement Section.

You are interested in part-time employment with HYDRIK. HYDRIK specializes in wetland delineation and permitting, flood control and management, and GIS mapping. Because of its experience with the U.S. Environmental Protection Agency and USACE, HYDRIK is retained by industrial, commercial, residential development, and oil and gas exploration companies to assist with the completion of the companies' projects. 95% of HYDRIK's work is outside of the coastal zone and is, therefore, exempt from CUP requirements. Although the remaining 5% of HYDRIK's work is subject to CUP requirements, you do not participate in matters related to HYDRIK in the Enforcement Section of the DNR/OCM/IAFSD.

Your position with HYDRIK would be as Project Manager, where one of your primary duties would consist of coordinating with the USACE concerning 404/10 permit approvals while providing the Senior Project Manager regular status updates. The Clean Water Act, 33 U.S.C. §1251 *et seq.*, establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Section 404 of the Clean Water Act prohibits the discharge of dredged or fill material into waters of the United States without a permit from the USACE. The USACE determines their regulatory jurisdiction over wetlands under the authority of Section 404 of the Clean Water Act, as overseen by the Environmental Protection Agency. 404/10 permits, issued by the USACE, protect the aquatic environment, while ensuring regulatory program efficiency and ensure fair, reasonable and timely decisions are made about activities that would result in a discharge of dredge or fill material into waters of the United States, including special aquatic sites such as wetlands.

Your other Project Manager duties would include: 1) coordinating frequently with the Senior Project Manager to assist in estimating milestones during the application process and reporting back on estimated times to reach public notice; 2) overseeing pre-notice application

modifications that may need to be submitted by the office; 3) coordinating with Louisiana Department of Environmental Quality to obtain Water Quality Certification approval; 4) communicating with the USACE in order to obtain post-notice comments within a timely manner; 5) addressing needs and alternatives and responding to the USACE and private comments post notice; and, 6) coordinating with the project engineer to obtain sewer tie-in approvals for DEQ and plat/ drainage approval for the USACE leading to USACE issuance of a mitigation letter.

Additionally, you would be consulted to ensure completeness of plat drawings and initial applications prepared by HYDRIK office staff members prior to formal submittal to the Senior Project Manager. Other office staff members would submit the application. From this point, you would coordinate with USACE staff on any revisions needed to complete the application and expedite the path to final approval. You would communicate regularly with the Senior Project Manager to discuss any project changes, minimization options, and general approaches to addressing the particular project's needs, alternatives, objectives, responses, etc. Once the mitigation letter is issued by the USACE, the Senior Project Manager will take over to coordinate mitigation. Once mitigation is paid, you would then be responsible for communicating with the USACE analyst to assist in expediting the draft permit issuance.

The Senior Project Manager would handle the 5% of HYDRIK's work that falls within the Coastal Zone. You would not be responsible for handling any applications for permits submitted to the Permits/Mitigation Division of the DNR/OCM. You would also not be responsible for handling any matters that fall under the jurisdiction of the Enforcement Section of the DNR/OCM/IAFSD.

LAW

La. R.S. 42:1102(2)(a)(i) defines "agency" to mean a department, office, division, agency, commission, board, committee, or other organizational unit of a governmental entity. "Agency of the public servant" and "his agency" when used in reference to the agency of a public servant shall mean for public servants in the twenty principal departments of the executive branch of state government, the office in which such public servant carries out his primary responsibilities.

La. R.S. 42:1102(18)(a) defines "public employee" to mean anyone, whether compensated or not, who is (i) an administrative officer or official of a governmental entity who is not filling an elective office; (ii) appointed by any elected official when acting in an official capacity, and the appointment is to a post or position wherein the appointee is to serve the governmental entity or an agency thereof, either as a member of an agency, or as an employee thereof; (iii) engaged in the performance of a governmental function; (iv) under the supervision or authority of an elected official or another employee of the governmental entity.

La. R.S. 42:1111A prohibits a public employee from receiving anything of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position.

La. R.S. 42:1111C(1)(a) prohibits a public servant from receiving any thing of economic value for any service, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the agency of the public servant and in which the public servant has participated.

La. R.S. 42:1111(C)(2)(d) provides that no public servant and no legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, shall receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are: (d) Neither performed for nor compensated by any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency; conducts operations or activities which are regulated by the public employee's agency; or has substantial economic interests which may be substantially affected by the performance or nonperformance of the public employee's official duty.

ANALYSIS

As a Coastal Resource Scientist IV in the Enforcement Section with DNR/OCM/IAFSD, you are a public employee under La. R.S. 42:1102(18)(a). Your agency is defined as the office in which you carry out your primary responsibilities, if you serve one (1) of the twenty (20) principal departments of the Louisiana State executive branch, pursuant to La. R.S. 42:1102(2)(a)(i). Within DNR, you carry out your primary responsibilities specifically in the Enforcement Section of the DNR/OCM/IAFSD. Accordingly, your agency is the Enforcement Section of the DNR/OCM/IAFSD, as it is the office in which you carry out your primary duties as a Coastal Resource Scientist IV.

La. R.S. 42:1111C(1)(a) prohibits a public servant from receiving any thing of economic value for any service, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the agency of the public servant and in which the public servant has participated. Your anticipated position as Project Manager is not a service, of which the subject matter is substantially devoted to the responsibilities, programs, or operations of your agency, the Enforcement Section of the DNR/OCM/IAFSD. The DNR/OCM/IAFSD Enforcement Section handles enforcement determinations and actions, as well as permitting matters that emanate from those actions that fall within the jurisdiction of the Louisiana Coastal Zone Management Program established by SLCRM. As a HYDRIK Project Manager, your duties and responsibilities would involve applying for and obtaining 404/10 permits from the USACE and not enforcement matters. Moreover, 95% of HYDRIK's work is subject to federal jurisdiction under Section 404 of the Clean Water Act (USACE) and not Louisiana's SLCRM/LCRP. Additionally, your anticipated position as Project Manager is not a service in which you have participated as a public servant. In the DNR/OCM/IAFSD Enforcement Section, you were not involved in the USACE regulated 404/10 permitting process.

La. R.S. 42:1111(C)(2)(d) prohibits a public servant from receiving any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are neither performed for nor compensated by any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person ... conducts operations or activities which are regulated by the public employee's agency. While the DNR/OCM/IAFSD Enforcement Section handles enforcement matters, it does not regulate the 5% of HYDRIK matters that are within the LCRP jurisdiction on a regular basis. Those matters are regulated by the Field Services Section, who monitors and assesses activities to ensure compliance with the LCRP and issued CUP permits. Compliance with the LCRP and the issued CUP permits are monitored and investigated by the Field Services Section. Only when activities are found to be conducted outside the perimeters of issued CUP permits are they then referred to the Enforcement Section.

Therefore, should HYDRIK's activities be flagged by the Field Services Section as being noncompliant with the LCRP and HYDRIK's CUP permits, those activities will then be transferred for regulation by the Enforcement Section, your agency. In that event, you would be prohibited from receiving a thing of economic value for services rendered to HYDRIK as a part-time employee. Currently, HYDRIK does not have any enforcement actions pending; therefore, you would not be prohibited from accepting the part-time Project Manager position with HYDRIK at this time.

In addition, La. R.S. 42:1114A would prohibit you from working for HYDRIK during the same hours you work for DNR.

CONCLUSION

The Board concluded, and instructed me to inform you, that based on the facts presented, the Code does not prohibit you from accepting part-time employment with HYDRIK while remaining a full-time employee of the Enforcement Section of the DNR/OCM/IAFSD as long as HYDRIK has no current issues pending within the Enforcement Section; and, as long as you are not working for HYDRIK during the same hours you are working for DNR. The Board advises you to seek another advisory opinion should this fact change.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Louisiana Code of Governmental Ethics. The Board issues no opinion as to past conduct or as to laws other than the Louisiana Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Act, and the conflict of interest provisions contained in the Louisiana Gaming Control Law. If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,
LOUISIANA BOARD OF ETHICS

LaToya D. Jordan
For the Board

DISCLAIMER
This is a draft opinion and it is **NOT** an opinion of the Louisiana Board of Ethics.
No party may rely on the facts or conclusions. The analysis and conclusions herein are provided for discussion purposes only, and are subject to change or revision at the meeting of the Board of Ethics at which this matter is considered.